Nos. 83-1321, 83-1432, 83-1433, 83-1442, 83-1443 & 83-1618

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1983

THE PEOPLE OF THE STATE OF CALIFORNIA, et al.,
Petitioners,

vs.

TENNECO OIL COMPANY, et al.,
Respondents.

On Petitions for Writs of Certiorari to the United States Court of Appeals For the Fifth Circuit

JOINT SUPPLEMENTAL MEMORANDUM OF PETITIONERS CALIFORNIA AND NEVADA CONCERNING PROPOSED SETTLEMENTS

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JOINT SUPPLEMENTAL MEMORANDUM OF PETITIONERS CALIFORNIA AND NEVADA CONCERNING PROPOSED SETTLEMENTS

I
INTRODUCTION

Pursuant to this Court's May 31, 1984 order, the People of the State of California and the Public Utilities Commission of the State of California ("California"), petitioners in No. 83-1321, and the Public Service Commission of Nevada ("Nevada"), a petitioner in No. 83-1432, hereby file this supplemental memorandum concerning the pending offer of settlement between petitioner El Paso Natural Gas Company ("El Paso") and respondents Tenneco Oil Company ("Tenneco") and Conoco Inc. ("Conoco"), as well as other settlements between parties in this proceeding. California and Nevada represent the ratepayers in their respective states, who rely heavily on the natural gas which El Paso transports to them from the San Juan Basin and are therefore greatly affected by any settlements pertaining to the future price and supply of this gas. Nevada also represents ratepayers in its state who rely on the natural gas which Northwest Pipeline Corporation ("Northwest") transports to them from the San Juan Basin.

Ever since 1974, after El Paso had unilaterally settled with the San Juan Basin natural gas producers ("the producers") as to the price it would pay for the special overriding royalties under the subject Gas Lease-Sale Agreements (GLAs), El Paso, California and some of the other petitioners herein have been litigating the jurisdictional issue which is presently before this Court.[1] Throughout the

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[1]The Federal Power Commission (predecessor to the Federal Energy Regulatory Commission ("the Commission"), allowed these settlement rates to be passed onto El Paso's customers, and ultimately the ratepayers in the western states who have been paying these overcharges throughout this litigation. In so doing, the Commission found it *significant* that in that settlement, El Paso had not given up its "best hope for relief from these special overriding royalty charges" since El Paso had maintained its right to continue litigating the jurisdictional question, and if El Paso were successful, the refund of these overcharges could be flowed back to the ratepayers. *El Paso Natural Gas Co.*, 57 F.P.C. 989, 990 (1977).

course of this jurisdictional litigation, settlement negotiations between El Paso and the producers have always included counsel for some of the petitioners herein, including California. Thus, for approximately ten (10) years, El Paso and the other petitioners have shared common ground in trying to prevent future gas prices under the GLAs from escalating significantly beyond proper regulation (and market-clearing prices), as well as in seeking refunds to ratepayers for past overcharges.

The present offers of settlement between El Paso and some of these producers sharply contrasts with this decade of previous cooperation and mutual interests between El Paso and the other petitioners herein. El Paso did not include any of the other petitioners in its settlement negotiations resulting in its agreement with respondent Union Oil Company of California ("Union").[3] Similarly, El Paso did not include any of the other petitioners in its settlement negotiations with Tenneco and Conoco. Instead, El Paso presented its offer of settlement (consisting of approximately 1000 pages) as a fait accompli to petitioners just before it filed its offer with the Commission. Initial comments on this offer of settlement, including requests for a hearing, are currently due at the Commission on July 2, 1984. Many

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[3]While this settlement agreement was in the context of El Paso's reassignment state court litigation in the District Court, 11th Judicial District, Harris County, Texas, many issues, such as the future price and supply of this gas, remain unresolved and may be the subject of the Commission proceeding on Union's certificate application in Docket No. CI84-141-000. Because this settlement may adversely affect El Paso's service to its customers, the Commission in its May 10, 1984 order required Union to make the settlement a part of the record. (See p. A-5 of the order in the attached appendix.) Notwithstanding the Commission's order, Union has not filed this settlement with the Commission and has refused to supply parties with a copy. While El Paso did furnish California with a copy of the settlement on June 7, 1984, we have not had sufficient time to analyze it for our filing with this Court.

of the petitioners herein intend to demand a hearing and the offer of settlement will be contested.

On the eve of this Court's conference to decide whether to grant certiorari in this case, El Paso, Tenneco and Conoco have brought to this Court's attention their offer of settlement, notwithstanding its lack of finality. These are the very companies (i.e., natural gas producers and a pipeline company) that Congress recognized must be regulated or else they would exploit consumers, *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672, 685 (1954), and they have entered into a settlement agreement with no participation or concurrence by the other petitioners, including those, such as California and Nevada, which represent the ratepayers. By its implication that this Court should deny certiorari (leaving final the decision of the court below) the untimely disclosure of the offer of settlement is a last ditch attempt to thwart the pricing protections that Congress had intended for all wholesales of natural gas in interstate commerce. Yet, the deliberate exclusion of the other petitioners, including those representing the ratepayers, from the settlement negotiations strongly indicates that the offer of settlement is not in the public interest. The only way to assure that the ratepayers in the western states will not be exploited by these companies is for this Court to grant certiorari and find that the Commission has jurisdiction over the subject lease-sales of natural gas.

II

THE COMMISSION CAN ONLY PROTECT THE PUBLIC INTEREST IF THIS COURT GRANTS CERTIORARI AND DETERMINES THAT THE COMMISSION HAS JURISDICTION OVER THE LEASE-SALES

Just as a court without subject matter jurisdiction is unable to assure a just resolution of a dispute, so too is the Commission unable to assure that the public interest will best be served in the present case unless and until this

Court grants certiorari and finds that the Commission has jurisdiction over the lease-sales in question. Consequently, it is realistic to expect that the Commission will await this Court's ruling on the Commission's jurisdiction before it finally determines whether the public interest supports the proposed settlements.

In the event that this Court finds that the Commission has jurisdiction, the Commission would have much more authority and alternatives in serving the public interest while reviewing the proposed settlements.[5] If the Commission has jurisdiction, we submit that it would not approve the present proposed settlements, because they are too detrimental to the western states ratepayers. Instead, the Commission could resume its remedy proceeding which had been close to trial before the court below issued its decision. The Commission's ability to protect the public interest is significantly circumscribed, however, if the decision of the court below is not reversed. Without Commission jurisdiction over the lease-sales, the producers would not be legally required to abide by any Commission decision except one approving the present offers of settlement under the terms, conditions and schedules dictated by the producers. Otherwise, the producers can walk away from these offers of settlement and attempt to triple their special overriding royalties on June 1, 1985, in which event El Paso has indicated it would then seek special relief to pass these costs onto the ratepayers.

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[5] The difference in how the Commission can review the proposed settlements depending upon whether it has jurisdiction is aptly demonstrated by its decision in *El Paso Natural Gas Co.*, 57 F.P.C. 989 (1977) when it passed the costs of the special overriding royalties onto the ratepayers. As the Commission informed this Court in its reply memorandum, "the Commission specifically stated that it was 'not deciding whether the amounts received by the special overriding royalty owners, *were they found to be jurisdictional*, are just and reasonable.' (57 F.P.C. at 1000)." [Emphasis added.] (FERC reply, pp. 7-8, fn. 7).

Without this Court's determination that the Commission has jurisdiction over the lease-sales, the Commission is powerless to order refunds by the producers for nearly a decade of overcharges to ratepayers in the western states. Tenneco and Conoco, whose GLAs account for approximately 70% of El Paso's natural gas involved in this case, have offered a total of $50 million in refunds in their proposed settlement, but this is a far cry from the $700 million which they would have to refund under California's and the Commission staff's theory of remedy. El Paso's "agreement" to this level of refund is preposterous, because the ratepayers have paid these overcharges since 1974 and El Paso is not authorized to settle the ratepayers' claim to these refunds.

In addition to this grossly inadequate level of refunds, the proposed settlements, if approved, would have severe effects on the future price and supply of the San Juan Basin natural gas for El Paso's customers. (See discussion, *infra.*) However, assuming *arguendo* that these offers of settlement are in the public interest and would not be devastating to the ratepayers, as we fear, the termination provisions of these settlements allow the producers to cancel the settlements under certain conditions which have already occurred or easily could occur. Under Union's and El Paso's settlement agreement, Union is already free to terminate the agreement, since the Commission has not yet issued Union a certificate of public convenience and necessity, and Union has an option to supersede this agreement with another one identical to the El Paso-Tenneco-Conoco offer of settlement.

Similarly, the El Paso-Tenneco-Conoco offer of settlement (pp. 24-25) provides:

"H. *Termination*

The Settlement may be terminated at the earlier of any of the following dates: (a) by either side if final

Commission approval in a form satisfactory to such party has not issued within 15 months after the date of execution, (b) by Tenneco Oil and Conoco if such final approval has not issued within 180 days following denial of certiorari in the litigation now pending before the Supreme Court, and (c) by El Paso, if such final approval has not issued within 30 days following the final reversal of the decision in *Sun Oil, supra.* In addition, if the orders are unacceptable, any of the parties have the right to terminate the Settlement Agreement.

Because the right to terminate arises in the event that the approvals are no longer subject to judicial review, expeditious consideration by this Commission is necessary to assure that approvals become final before the termination rights arise."

Under this agreement, if this Court denies certiorari, the Commission has only 180 days (really 150 days if one subtracts the 30-day period for filing petitions for rehearing) to finally approve the settlement. If any party opposes it or if it cannot be decided within 150 days because, for example, the producers are not cooperative in discovery, then Tenneco or Conoco can terminate the agreement. They can also terminate the agreement if the Commission's order is unacceptable.

Thus, if this Court denies certiorari, the producers are in absolute control of their settlement proposal. Tenneco and Conoco can dictate the time for discovery, hearings, briefing schedules, and the Commission's issuance of the decision on this settlement and even the form of the Commission approval of it. Of course, if the Commission denies the settlement or any party appeals the Commission's approval of it, the settlement can be terminated.

Clearly, this case is far from being settled. With Union able to presently terminate its agreement (and withdraw

its certificate application) and Tenneco and Conoco able to easily walk away from their offer of settlement, these are only, at best, possibilities of offers of settlement and they should not dissuade this Court from granting certiorari. It is certainly foreseeable that after having informed this Court of the alleged virtues of their proposed settlements, that in the event that this Court denies certiorari, the producers may ultimately terminate their settlement agreements and forever keep their lease-sales nonjurisdictional. The only way that the Commission can truly protect the public interest is by having jurisdiction over the subject matter while considering the settlement proposals.

III

THE RATEPAYERS FACE OMINOUS ALTERNATIVES IF THE PRODUCERS ESCAPE REGULATION THROUGH THIS COURT'S DENIAL OF CERTIORARI

Besides losing their opportunity to seek refunds for over $1 billion for past overcharges, the ratepayers in the western states face potentially severe prospective gas prices and/or supply impacts if this Court does not reverse the decision of the court below.

The proposed settlements between El Paso and Union (concerning approximately 14% of El Paso's gas in question) and El Paso and Tenneco and Conoco (concerning approximately 70% of El Paso's gas in question) can best be understood in the context in which they were entered. After El Paso implemented this Court's *Mid-Louisiana* decision, *Public Service Commission of New York v. Mid-Louisiana Gas Co.*, ... U.S. ......, 103 S.Ct. 3024, 77 L.Ed. 2d 668 (1983), which limited El Paso to Natural Gas Policy Act of 1978 ("NGPA"), 15 U.S.C. § 3301, *et seq.*, ceiling prices, it unsuccessfully sought in Harris County, Texas state court litigation to reassign the properties burdened by the special overriding royalties, which exceeded the applicable NGPA ceiling prices. During this litigation, Union vol-

untarily accepted reassignment, and in the Commission's proceeding on Union's certificate application (Docket No. CI84-141-000), Union seeks Section 109 pricing (15 U.S.C. § 3319) under the NGPA for old gas, which would more than double the price El Paso's customers currently pay for this gas, and would be more than four times the proper price of this gas (NGPA Section 104 flowing gas, 15 U.S.C. § 3314) if the Commission has jurisdiction over the lease-sales.

In the Commission proceedings, petitioners will for the first time have the opportunity to learn the full impacts of the settlement agreement between Union and El Paso. We are unable to detail them at this time, since we did not receive a copy of it until June 7, 1984 and have not yet had an opportunity to conduct discovery. However, in addition to the proposed increase in rates if Union receives the Section 109 pricing, we already recognize that western states ratepayers will be adversely affected by at least two of the provisions in Union's proposed gas purchase contract. First of all, El Paso has previously received revenues from its extraction of liquid hydrocarbon products ("liquids") from the gas under the GLAs. El Paso has credited these revenues to its cost of service thereby reducing the rates its customers must pay. In this proposed gas purchase contract, El Paso agrees to transfer 77% of the liquids revenues from El Paso's customers (and therefore ratepayers) to Union. Thus, El Paso's rates would increase due to the transfer of ownership of these liquids. Secondly, Union has a right to retain up to 25 % of the gas produced from new wells on these properties. Thus, in the event of any gas shortage in the future, El Paso's customers in the western states would be threatened by this reduction in El Paso's gas supply.

Tenneco and Conoco did not enter into their settlement agreement with El Paso until after they won the state court litigation and thus had even more leverage than Union in its settlement with El Paso. We are informed and believe

that after the state court's ruling, counsel for Tenneco and Conoco stated publicly to the press that the special overriding royalties could amount to $6 billion over 20 years.[4] Thus, this current offer of settlement where they have given up the right to collect these royalties would, undoubtedly, generously compensate the producers, and we fear this will be at the ratepayers' expense.

While petitioners need extensive discovery in the Commission proceedings to ascertain the full impacts that would occur if this proposed settlement is approved, we already recognize that western states ratepayers will be adversely affected in the future, besides losing over 90% of the refunds they should receive. Like the Union agreement, Tenneco and Conoco have reserved up to 25% of the new gas from these properties which would be a severe curtailment in El Paso's gas supply in the event of a gas shortage. Also, rates for old gas would more than double for the next two years and thereafter would fall under the interstate rollover rates under Section 106(a) of the NGPA, 15 U.S.C. § 1316(a), (currently priced at 89¢/MMBtu), whereas under proper regulation, the price should be approximately half of that according to the flowing gas rates of Section 104 of the NGPA, 15 U.S.C. § 3314, (currently priced at 49¢/MMBtu), if the Commission has jurisdiction over these lease-sales.

Most significantly, California and Nevada are apprehensive that western states gas consumers could face substantial increases in their rates from El Paso's transfer of liquids revenues from the ratepayers to Tenneco and Conoco. Similar to the Union agreement, El Paso has transferred at least 77% of its revenues for liquids from the

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[4]See *Houston Post* March 1, 1984 story in the appendix (p. A-8) attached hereto. We are informed and believe that even this $6 billion figure does not include the tripling of special overriding royalties on June 1, 1985 that the producers may seek under the 1974 settlement agreement.

GLA properties to Tenneco and Conoco. In addition, under the proposed settlement El Paso would amend approximately 100 other San Juan Basin gas purchase contracts with Tenneco and Conoco and would transfer all of its liquids revenues from those properties (which were not even part of this litigation) from ratepayers to Tenneco and Conoco. Additionally, with the producers' incentive to extract as much liquids as possible, the gas they supply to El Paso will contain less Btus, further threatening future gas supplies, and much of this gas is low-cost old gas which would have to be replaced, if it can be, by more expensive new gas. Through discovery we could learn the full amounts and impacts involved. In view of the fact that these producers settled with El Paso at a time when they had the most leverage over El Paso, and that they deliberately excluded all of the other petitioners from these negotiations, we have reason to believe that this impact could be enormous.

Unless this Court grants certiorari and reverses the decision of the court below, western states ratepayers face dismal alternatives. Absent a jurisdictional finding by this Court, El Paso has represented that it will seek from the Commission special relief to pass onto its customers (and ratepayers) the exorbitant costs it must pay to the *unregulated* producers. On the other hand, if El Paso's proposed settlements with certain producers are approved by the Commission, El Paso's customers and ratepayers still face substantial rate increases and risk a curtailment in their future gas supply. Moreover, these settlements do not apply to all of El Paso's or Northwest's gas produced under the GLAs and PLAs.[5]

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[5]El Paso has not settled with producers of 15% of its gas in question. We are informed and believe that Northwest, which is in a similar predicament as El Paso, has not settled with producers of over 25% of the gas it receives under its Pacific Lease-Sale Agreements ("PLAS") and its special overriding royalties could more than double on June 1, 1985.

El Paso, Northwest, their customers and the western states ratepayers are entrapped in a no-win situation due to the producers' current success in escaping from the regulations which Congress intended to govern wholesales of interstate gas. Unless this Court reviews this matter and reverses the decision below, the Commission is relatively powerless to prevent this exploitation, and the pipeline companies, their customers, and the western states ratepayers are at the mercy of the producers.

IV
CONCLUSION

For the foregoing reasons, this Court should grant the petitions for writs of certiorari.

Dated: June 12, 1984

Respectfully submitted,

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(Appendices follow)

Appendix A

United States of America
Federal Energy Regulatory Commission

Hearing

Before Commissioners: Raymond J. O'Connor, Chairman; Georgiana Sheldon, J. David Hughes, A. G. Sousa and Oliver G. Richard III.

Union Oil Company of California Docket No. CI84-141-000
Order Providing for Hearing

(Issued May 10, 1984)

Union Oil Company of California (Union) has filed an application for a certificate of public convenience and necessity authorizing Union to sell gas to El Paso Natural Gas Company (El Paso) from its interest in certain leases in the Basin Dakota, Mesa Verde Blanco, South Blanco and Ballard Pictured Cliffs Fields, San Juan and Rio Arriba Counties, New Mexico. El Paso is the predecessor in interest to the properties from which the sale will be made.

Union's application follows an agreement to settle certain disputes between El Paso and Union regarding their future relationship with respect to the leases in question. These disputes initially involved the level of overriding royalties payable to Union under three lease agreements (GLAs 76, 348 and 349) entered into in 1953 and 1958. The court recently held that these lease agreements, among others, were not subject to this Commission's jurisdiction under the Natural Gas Act.[1] El Paso thus remained obli-

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[1] *El Paso Natural Gas Co. v. Sun Oil Co.*, 708 F.2d 1011 (5th Cir. 1983). A petition for a writ of certiorari was filed with the United States Supreme Court by the Commission on April 2, 1984, in *FERC v. Tenneco Oil Company, et al.*

gated under the 1974 amendments to the three lease agreements to pay Union an overriding royalty equal to the highest price of general applicability in the San Juan Basin area less seven cents per Mcf. Since passage of the Natural Gas Policy Act of 1978 (NGPA), El Paso has interpreted these amendments as entitling Union to collect for its overriding royalty interest the NGPA Section 102 price less seven cents per Mcf. This interpretation has been applied by El Paso, even though El Paso, itself, may be limited for gas produced from some of the properties to prices below the Section 102 price.

Following the decision in *Public Service Commission v. Mid-Louisiana Gas Co.*, 51 U.S.L.W. 5030 (June 28, 1983), where the Court held that gas produced by a pipeline is subject to the first sale pricing provisions in the NGPA, El Paso sought to convey the properties covered by the three lease agreements to Union. El Paso also filed a petition for declaratory order in the District Court of Harris County, Texas, naming Union as a defendant, as well as other producers who had overriding royalties in other lease agreements.[3] El Paso claimed there that the *El Paso* and *Mid-La* decisions had made the wells on the properties in question unprofitable to operate and non-commercial and attempted to invoke provisions in GLA 76 that allegedly empowered it unilaterally to reassign these wells to Union effective October 1, 1983.[4] In response Union denied El Paso's right unilaterally to reassign the wells.

El Paso also filed a petition with this Commission in Docket No. CI83-356-000 requesting, *inter alia*, an order

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[3]*El Paso Natural Gas Co. v. Tenneco Oil Co., et al.*, Docket No. 83-50539. In a memorandum opinion issued February 15, 1984, the Court denied El Paso's petition.

[4]GLAs 348 and 349 do not contain such a provision, and with respect to these agreements El Paso tendered reassignment, subject to Union's acceptance.

requiring Union to seek certificate authorization for the sale by Union to El Paso of gas produced from the properties it had allegedly reconveyed. Union in its petition to intervene in that case denied El Paso's right unilaterally to reassign any of the properties and contended that it was not required to seek a certificate.

Union and El Paso on November 11, 1983, resolved their dispute concerning reassignment of the subject properties. They have agreed that upon receipt of a certificate satisfactory to Union authorizing it to sell gas to El Paso, Union will accept voluntarily reassignment of the properties effective as of October 1, 1983. As a result of the settlement, Union was dismissed as a defendant in the Harris County litigation.

The gas purchase agreement which will govern the sale of gas by Union to El Paso covers gas produced from Union's interests in the subject properties. It requires El Paso to take or pay for on an annual basis 50% of Union's deliverability, but in no case less than ratably with other producers in the area. The agreement further provides that El Paso shall pay the maximum lawful price applicable to the gas under the NGPA, except that for gas subject to NGPA Section 107(c)(5), the price shall not exceed the NGPA Section 102 ceiling.

Union states that it will charge the NGPA Section 108 price for stripper well gas and the NGPA Section 102 price for gas qualifying under NGPA Section 107(c)(5). For the remainder of the gas Union claims the right to charge the ceiling prescribed in NGPA Section 109. As to such gas Union asserts that it was committed or dedicated to interstate commerce prior to the enactment of the NGPA but was not subject to a just and reasonable rate set by the Commission.

After due notice by publication in the *Federal Register* on December 29, 1983 (48 Fed. Reg. 57364), timely petitions

to intervene were filed by Southern California Gas Company (So Cal), Pacific Gas and Electric Company (PG&E), The People of The State of California and The Public Utilities Commission of The State of California (California), El Paso Natural Gas Company (El Paso), Southern Union Gas Company, Gas Company of New Mexico, Southwest Gas Corporation (Southwest) and Tenneco Oil Company, Conoco Inc., *et al.*[4] An untimely petition was filed by Northwest Pipeline Corporation (Northwest). Good cause exists to grant Northwest's petition to intervene in the instant proceeding.

So Cal, PG&E, California, and Southwest in their petitions have indicated disagreement with Union's position that it is entitled to the NGPA Section 109 price. So Cal, PG&E and California have requested a formal hearing. PG&E, as a possible alternative, has suggested an informal conference. El Paso in its petition takes no position with respect to Union's price, but it does suggest that if the price becomes a disputed issue, it would involve a question of law which can best be addressed by the submission of written arguments.

In addition to the Section 109 price question, there is also a need to resolve one other issue before any certificate can be issued to Union. Specifically, the various provisions in the settlement between El Paso and Union concerning the transfer of the subject properties should be explored in this certificate case. While the settlement has not been submitted to this Commission for its approval, we think it important for us to ascertain how the settlement affects El Paso's customers and whether it is in the public interest to grant Union authorization in light of the settlement provisions.

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[4]These interventions have been granted by operation of Rule 214.

The transfer of the subject properties to Union may constitute a change in the service previously rendered by El Paso. Union's application should, therefore, be evaluated in the context of not only the changes on Union but also the types and extent of changes on El Paso. If Union is to be authorized to acquire the properties and sell gas from the properties, a satisfactory showing of consistency with the overall public interest will be required. This is important because a satisfactory showing made in this subject proceeding would constitute a presumption of prudence in implementing the provisions of the settlement in El Paso's jurisdictional rates. In this regard, Union and El Paso shall be required to demonstrate that the settlement provisions are in the public interest. In addition, Union shall make the settlement a part of the record in this case.

In view of the foregoing, it is necessary to set this matter for hearing. Because of the complex nature and certain unique features of the application, the Commission believes that a prehearing conference involving all the parties and the staff should be convened at an early date. The express purpose of that conference would be for delineating issues of concern by the various parties and determining issues which may be resolved by agreement and issues which may require legal briefing or formal hearings.

Union has suggested in its certificate application that there is no need to resolve herein the question of whether El Paso should obtain abandonment authorization under Section 7(b) of the Natural Gas Act before it reassigns the properties to Union. We agree. Union has voluntarily agreed to the reassignment and has applied for certificate authorization. El Paso is an intervenor in this case and will be required to show that the settlement with Union is in the public interest. The Commission will thus have available all of the information necessary to determine whether Union's proposed sale is required by the present or future public convenience and necessity.

The Commission finds:

The public interest requires that this case be set for formal hearing.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act, particularly Sections 4, 5, 7, 8, 14, 15, and 16, and the Commission's rules and regulations, a public hearing shall be held in the above-entitled proceeding.

(B) A Presiding Administrative Law Judge shall be designated by the Chief Administrative Law Judge (18 C.F.R. § 385.304), to preside over this proceeding in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N. E., Washington, D. C. 20426. A prehearing conference shall be convened at an early date for the express purpose of delineating issues of concern by the various parties and determining issues which may be resolved by agreement and issues which may require briefing or formal hearings. The Presiding Administrative Law Judge is authorized to establish such further proceedings in accordance with this order and the Rules of Practice and Procedure.

(C) Northwest is permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided,* however, that the participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in its petition to intervene; and *Provided, further,* that the admission of said intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission.

(SEAL)

/s/ Kenneth F. Plumb
Kenneth F. Plumb,
Secretary.

Appendix B

Houston Post,
March 1, 1984, p. 1F

El Paso
to appeal
gas case
By Sam Fletcher
Post Energy Writer

El Paso Natural Gas Co. said Wednesday it plans to appeal its loss in an unique natural gas case described as the largest ever tried.

The ruling involves royalty payments which some say would amount to $6 billion over a 20-year period and $2 million in attorneys' fees for the 84 winning defendants.

Judge William N. Blanton Jr. of the 11th District Court of Harris County entered final judgment Wednesday denying El Paso's efforts to transfer ownership of natural gas leases in an effort to avoid those royalty payments which company officials said made those wells unprofitable.

3,200 wells

Involved were 3,200 wells in the San Juan Basin of New Mexico.

Robert J. King of Liddell, Sapp, Zively, Brown & LaBoon, the law firm representing El Paso, said the company filed the suit in 1983 against Tenneco Oil Co., Conoco Inc. and other defendants because it is losing $50 million a year on production from those leases.

King said the controversy began with a June 1983 ruling by the Supreme Court which for the first time applied the same federal price limitations on gas wells owned and operated by pipeline companies as those wells not owned by pipelines.

Because the series of contracts involving the San Juan Basin leases date back to 1952-1953, King said, some of that gas is priced at 85 cents per thousand cubic feet (Mcf) with the remainder in the range of $2.50 Mcf.

However, he said, the contracts provide for overriding royalties amounting to $3.25 per Mcf to be paid to the defendants. Because the company couldn't sell its gas for as much as the overriding royalties, he said, El Paso is losing $50 million annually.

"If the gas bubble disappears and production increases, the corresponding loss could approach $100 million a year," he said.

For that reason, he said, El Paso filed suit last August seeking relief under a provision of the contracts which allowed it to turnback unprofitable wells.

"The company thought it could give the properties back to the clients to eliminate having to pay royalties, and then purchase the gas from them at the regulated price," said Diana E. Marshall, a partner at Baker & Botts who represented most of the defendants, including Tenneco and Conoco.

She said those royalties would total about $6 billion over a period of 20 years.

Amounts not considered

In his ruling, Blanton said the lease sale agreements do not take into account the amounts of either royalties or gas prices in determining the profitability of a well.

"He construed the contract language to mean that the wells are not unprofitable in the normal sense," King said. "The judge only looked at the operational costs."

King said the wells, which are dedicated to interstate markets primarily in Arizona and California, will continue

producing. He said, "It is one of the most substantial gas fields in the nation."

Because of the unique nature of this case, both sides said it will have no impact on other natural gas contracts or prices.

"We're told this is the largest case ever tried," Marshall said. "Other suits may have been filed that initially asked for more money, but this is supposed to be the biggest amount of money and controversy ever disposed of by a trial judge."